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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 SAN DIEGO UNIFIED PORT
13 DISTRICT,

14 Plaintiff,

15 v.

16 GENERAL DYNAMICS
17 CORPORATION; LOCKHEED
18 MARTIN CORPORATION;
19 LOCKHEED MARTIN
ENGINEERING & SCIENCES
COMPANY,

20 Defendants.

Case No. 07-cv-1955-BAS-WVG

**ORDER DENYING WITHOUT
PREJUDICE PLAINTIFF SAN DIEGO
UNIFIED PORT DISTRICT'S MOTION
TO ENFORCE SETTLEMENT
(ECF No. 118)**

21
22 These consolidated actions arise out of environmental contamination emanating from
23 two properties located alongside the San Diego Bay. The San Diego Unified Port District
24 sued General Dynamics Corporation and Lockheed Martin Corporation for allegedly
25 contaminating sediment in the San Diego Bay while conducting industrial activities at the
26 properties.

27 In 2017, the Court approved the parties' 300-page Settlement Agreement. As part of
28 the settlement, Lockheed Martin agreed to take remedial action that satisfies the San Diego

1 Regional Water Quality Control Board. Events, however, have not gone as planned.
2 Lockheed Martin and the Regional Water Board are embroiled in a dispute over the scope
3 of the remediation. Lockheed Martin claims the Regional Water Board drastically moved
4 the goalposts for the cleanup, leading to a petition for writ of mandate in the San Diego
5 Superior Court. That lawsuit seeks to force the Regional Water Board to restore cleanup
6 terms similar to those Lockheed Martin contends the parties contemplated in their
7 Settlement Agreement. The petition also argues the settlement in this Court has been
8 “vitiating” by the agency’s new cleanup terms. The Regional Water Board is not a party to
9 the lawsuit in this Court, however. The dispute in this Court instead concerns how liability
10 for the contamination should be allocated among the three potentially responsible parties.

11 The Port District now moves to enforce the Settlement Agreement, arguing Lockheed
12 Martin is in breach of its promises. The Port District asks the Court to compel Lockheed
13 Martin to complete the cleanup and withdraw pleadings in the lawsuit against the Regional
14 Water Board. The motion also asks the Court to enjoin the state court “from entering any
15 rulings on the subject matter of the Settlement.” Lockheed Martin contends the Port
16 District’s motion is unripe because if the company succeeds in state court, this Court’s
17 ruling would likely be moot. General Dynamics weighs in, too, arguing concessions in
18 Lockheed Martin’s response address the gravamen of the Port District’s motion, and the
19 parties have not complied with their dispute resolution procedure.

20 The Court agrees. To leave no doubt, the Settlement Agreement approved in this
21 Court remains in full force and effect and binds the Port District, Lockheed Martin, and
22 General Dynamics. This Court has exclusive jurisdiction to interpret and enforce the
23 Settlement Agreement. That said, the Court is unpersuaded that intervening in Lockheed
24 Martin’s dispute with the Regional Water Board is appropriate. The Court is likewise
25 unconvinced that the Port District has complied with the Settlement Agreement’s dispute
26 resolution procedure. Hence, for the following reasons, the Court **DENIES WITHOUT**
27 **PREJUDICE** the Port District’s Motion to Enforce Settlement (ECF No. 118).

1 I. BACKGROUND

2 The Court summarized the history of this long-running dispute in its Order Granting
3 Motion to Confirm Settlement and Bar and Dismiss Claims (“Dismissal Order”). (ECF
4 No. 105.) Hence, the Court provides only a snapshot here.

5 Settlement. Under the Settlement Agreement, the parties deny liability but agree to
6 contribute time and resources toward remediating the contamination. (Settlement
7 Agreement §§ 2.1–2.3, 5.1, ECF No. 106-1.) Lockheed Martin agreed to implement the
8 Remedial Action Plan required under the Regional Water Board’s Cleanup and Abatement
9 Order (“CAO”). (*Id.* § 2.1(a).) Based on the then-proposed Remedial Action Plan, the
10 estimated cost to remediate the premises was \$3.3 million. (Gigounas Decl. ¶¶ 13–14, ECF
11 No. 105-5.) Lockheed Martin also agreed to remove certain installations and
12 improvements under a proposed demolition plan. (Settlement Agreement § 2.1(b).) As for
13 General Dynamics, it promised to contribute to the cleanup by paying \$850,000 to
14 Lockheed Martin. (*Id.* § 2.3.) Meanwhile, the Port District agreed to abate rent for
15 Lockheed Martin, contribute staff time for a Coastal Development Permit, and waive
16 certain claims for reimbursement and damage to natural resources. (*Id.* § 2.2(a), (d).)
17 Finally, the parties agreed to a dispute resolution process:

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19 Each Party agrees to provide the other Parties no fewer than thirty calendar
20 days’ notice of any dispute, claim, or difference arising out of or in connection
21 with this Agreement, or the breach or invalidity thereof, including disputes
22 related to disposal of contaminated dredge spoils in the future, prior to
23 commencing any proceedings in any court or tribunal. During the thirty day
24 notice period, the Settling Parties agree to attempt in good faith to resolve the
25 issue. If the Settling Parties do not reach resolution of the issue, any dispute
26 concerning this Agreement or disposal costs must be resolved first by
27 participation in a mediation with Timothy Gallagher, or with another mediator
28 mutually agreed upon by the parties. *Only if such mediation is unsuccessful*
shall the parties seek relief in the United States District Court for the Southern
District of California. To the maximum extent permitted by law, the Settling
Parties agree to personal jurisdiction, subject matter jurisdiction, and venue in
that Court for purposes of resolving disputes under this Agreement.

1 (*Id.* § 7.3 (emphasis added).)

2 After a hearing, the Court approved the parties' settlement. (ECF Nos. 111, 112.)
 3 The Court incorporated the Settlement Agreement throughout its Dismissal Order. (*E.g.*,
 4 Dismissal Order 7:10–8:13, 20:14–22:2.) Further, upon dismissing the parties' claims with
 5 prejudice, the Court expressly retained jurisdiction:

6 The Court shall retain jurisdiction over both the subject matter of this
 7 Settlement Agreement and the parties for the duration of the performance of
 8 the terms and provisions of the Settlement Agreement for the purpose of
 9 enabling the parties, and each of them, to apply to the Court at any time for
 10 such further order, direction, and relief as may be necessary or appropriate to
 11 construe, implement, or enforce compliance with the terms of the Settlement
 Agreement, which rights and obligations shall survive the dismissal of these
 actions.

12 (*Id.* 21:15–21.)

13 Petition. Events did not unfold as expected. In 2023, Lockheed Martin filed a
 14 Verified Petition for Writ of Mandate and Request for Stay against the Regional Water
 15 Board and the California State Water Resources Control Board. (State Pet., ECF No. 118-
 16 11.) Lockheed Martin's lawsuit allegedly follows several years' worth of negotiations and
 17 disputes with Regional Water Board on the scope of the cleanup. (*Id.* ¶¶ 36–68.)

18 In the Petition, Lockheed Martin claims it "is ready, willing, and able to execute the
 19 background cleanup that was mutually agreed upon" in the Settlement Agreement. (State
 20 Pet. ¶ 2.) Lockheed Martin contends, however, that the Regional Water Board violated
 21 state law by "dramatically moving the goal posts" for the cleanup and issuing "an entirely
 22 new CAO in August 2022." (*Id.* ¶¶ 3, 5.) This new CAO allegedly upends the Settlement
 23 Agreement "and decades of work by multiple parties and consultants—an administrative
 24 process that took nearly fifteen months, during which time the Site could have been
 25 remediated." (*Id.* ¶ 5 (emphasis omitted).) Hence, Lockheed Martin advances various
 26 theories to convince the San Diego Superior Court to require the Regional Water Board to
 27 rescind the 2022 CAO and return to the 2017 cleanup proposal. (*Id.* ¶¶ 167–215.)

1 As part of its arguments, Lockheed Martin also casts doubt on the continued viability
2 of the Settlement Agreement. One of Lockheed Martin's state court arguments is that the
3 Regional Water Board improperly omitted the Port District and General Dynamics from
4 the 2022 CAO as responsible parties. (State Pet. ¶¶ 125–139.) Lockheed Martin contends
5 that “while the terms of the 2017 Settlement Agreement have not changed, the 2017
6 Settlement Agreement itself was *vitiated* upon issuance of an entirely new and substantially
7 different CAO and that Lockheed Martin does not agree to be the sole implementing party
8 of the expanded cleanup.” (*Id.* ¶ 130.) Thus, Lockheed Martin claims the Settlement
9 Agreement “does not govern [the parties'] respective allocation of liability at the
10 [properties] under the 2022 CAO.” (*Id.* ¶ 134.)

11 The Port District now moves to enforce the Settlement Agreement in light of
12 Lockheed Martin's Petition and failure to complete the cleanup. (ECF No. 118.) Lockheed
13 Martin opposes. (ECF No. 129.) Both the Port District and General Dynamics reply. (ECF
14 Nos. 130, 131.) The Court finds this Motion suitable for determination on the papers
15 submitted and without oral argument. *See* Fed. R. Civ. P. 78(b); Civ. L. R. 7.1(d)(1).

16 II. ANALYSIS

17 The Court begins by confirming its jurisdiction. A court may retain ancillary
18 jurisdiction to enforce a settlement agreement if the parties agree and the court embodies
19 the agreement in its dismissal order. *Kelly v. Wengler*, 822 F.3d 1085, 1095 (9th Cir. 2016)
20 (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381 (1994)). As recapped
21 above, the Court incorporated the parties' Settlement Agreement throughout its Dismissal
22 Order and expressly retained jurisdiction at the parties' request. Lockheed Martin
23 unequivocally subjected itself to this Court's jurisdiction and panoply of enforcement
24 powers. (Dismissal Order 21:15–21.) The Court thus can consider the Port District's claim
25 that Lockheed Martin is in breach of the Settlement Agreement and has therefore violated
26 the Dismissal Order. *See id.* at 1095–96 (affirming court's civil contempt finding and
27 award of attorneys' fees based on breach of an incorporated settlement agreement).

1 The Port District contends Lockheed Martin breached the parties' deal by failing to
2 complete the cleanup, by challenging the enforceability of the Settlement Agreement in
3 state court, and by neglecting to complete certain demolition in a timely manner. (Mot.
4 7:17–20:15.) Lockheed Martin counters that the Motion is premature because the
5 resolution of its state court action “will narrow the outcomes of the Port’s Motion” and
6 likely moot this Court’s ruling. (Opp’n 11:2–3, 12:10–13:7.) In addition, Lockheed Martin
7 admits that “*this* Court presides over the Settlement” and contends it would be improper to
8 presume the state court will rule that Lockheed Martin can escape the Settlement
9 Agreement. (*Id.* 1:16, 14:13–15:13.) General Dynamics weighs in last. It argues the Port
10 District’s motion is moot because Lockheed Martin’s Opposition addresses the substance
11 of the Port’s demands. (Reply 1:14–16.)

12 At this juncture, the Court is persuaded that wading into the state court dispute is
13 unnecessary. The Court has reviewed Lockheed Martin’s Verified Petition for Writ of
14 Mandate. The linchpin of Lockheed Martin’s suit is that the Regional Water Board’s
15 conduct is unlawful under state law. The Court expresses no opinion on the merits of
16 Lockheed Martin’s claims. It is enough to say here, however, that the Court finds
17 interfering with Lockheed Martin’s action against a nonparty is unwarranted—without
18 reaching the parties’ arguments concerning the Anti-Injunction Act. *See Flanagan v.*
19 *Arnaiz*, 143 F.3d 540, 545 (9th Cir. 1998) (noting the exceptions to the Anti-Injunction Act
20 “allow federal courts to enjoin state courts in cases where ‘some federal injunctive relief
21 may be necessary to prevent a state court from so interfering with a federal court’s
22 consideration or disposition of a case as to seriously impair the federal court’s flexibility
23 and authority to decide that case’” (quoting *Atl. Coast Line R. Co. v. Bhd. of Locomotive*
24 *Engineers*, 398 U.S. 281, 295 (1970))). There is a dispute between Lockheed Martin and
25 the Regional Water Board over the scope of the cleanup required, and any ruling by the
26 state court would either moot this Court’s determination or require the parties to overhaul
27 their briefing and positions. Indeed, if Lockheed Martin prevails, it will need to complete
28 the cleanup contemplated by the 2017 CAO and will lack a justification if it fails to do so.

1 If Lockheed Martin does not prevail, it will need a determination from this Court
2 interpreting the Settlement Agreement as not applying to the 2022 CAO. Lockheed Martin
3 will otherwise be in breach of the Settlement Agreement and in violation of the Court's
4 Dismissal Order.

5 At the same time, the Court appreciates the Port District's concern over Lockheed
6 Martin's arguments addressing the "vitiation" of the Settlement Agreement. The Court
7 underscores that the Dismissal Order remains in full force and effect. The incorporated
8 Settlement Agreement binds the Port District, Lockheed Martin, and General Dynamics.
9 And this Court's jurisdiction over the matter is exclusive. Even where a court's retention
10 of jurisdiction does "not include the word 'exclusive,'" the Ninth Circuit reasons
11 "exclusivity is inferred" because "it would make no sense for the district court to retain
12 jurisdiction to interpret and apply its own judgment to the future conduct contemplated by
13 the judgment, yet have a state court construing what the federal court meant in the
14 judgment." *Flanagan*, 143 F.3d at 545; *accord Republic Bldg. Co., Inc. v. Charter Twp.*
15 *of Clinton, Michigan*, 81 F.4th 662, 668 (6th Cir. 2023) ("When a consent judgment
16 contains a provision stating that a court retains jurisdiction over its interpretation and
17 enforcement, that jurisdiction is presumed exclusive."). Hence, only this Court may
18 enforce compliance with the Dismissal Order or determine that the Settlement Agreement
19 has been "vitiated." Moreover, federal courts like this one presume state courts follow the
20 law. *E.g., Jeffers v. Lewis*, 38 F.3d 411, 415 (9th Cir. 1994). Thus, given these rules and
21 Lockheed Martin's admission that this Court presides over the Settlement Agreement, the
22 Court finds granting further relief is not warranted.

23 The Court turns to one final issue. General Dynamics argues the parties' multi-step
24 dispute resolution process has not been followed and "asks the Court to ensure that the
25 parties comply with the Settlement Agreement's dispute resolution provisions to ensure
26 that its rights are protected." (Reply 2:17–18.) This point is well taken. The Port District
27 does not demonstrate it complied with the process excerpted above, including for its
28 argument that Lockheed Martin has failed to complete certain demolition under the


1 Settlement Agreement. The Court thus will deny without prejudice the Port District's
2 motion. The Court reminds Lockheed Martin, too, that any claim that the Settlement
3 Agreement has been invalidated will need to proceed under this process and include
4 General Dynamics's participation. The Court therefore will order the parties to comply
5 with the Settlement Agreement's dispute resolution process and require that any future
6 request submitted to this Court include evidence of this compliance.

7 **III. CONCLUSION**

8 In light of the foregoing, the Court **DENIES WITHOUT PREJUDICE** the Port
9 District's Motion to Enforce the Settlement Agreement (ECF No. 118). The Court
10 confirms that the Dismissal Order and the Settlement Agreement incorporated therein
11 remain in full force and effect. Further, the Court **ORDERS** the parties to comply with the
12 Settlement Agreement's "Disputes" provision—§ 7.3. Any dispute submitted to this Court
13 concerning the Settlement Agreement, including a renewal of the Port District's Motion,
14 must be accompanied by a declaration attesting that each step of the dispute resolution
15 process has been satisfied.

16 **IT IS SO ORDERED.**

17
18 **DATED: February 8, 2024**


Hon. Cynthia Bashant
United States District Judge